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Reservations or Conditions to Treaty  
(Paper pursuant to I. BI of  
IR Memo of 13 December)

RESERVATIONS

The agreed U.S.-Soviet language to Article V does not contain any express limitation on reservations. Generally, absent such limitations, the ability of a state to adhere to a multilateral agreement pursuant to a reservation is dependent upon the nature of <sup>the</sup> reservation, which must be consistent with the purposes and objectives of the provisions of the agreement, as well as the surrounding negotiations. Any substantive reservation may, however, complicate obtaining widespread adherence to the treaty. Any discussions with other delegations concerning possible reservations should bear this in mind and should be balanced against a particular state's not being willing to adhere without a reservation.

Under U.S. practice, any reservation which is submitted by a state pursuant to its signature or ratification prior to the treaty's submission to the Senate would have to be submitted to the Senate for its advice and consent, before the agreement would be binding as between the reserving party

GROUP 3  
Downgraded at 12 year  
intervals; not  
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- 2 -

and the United States. If the reserving state's accession follows U.S. ratification, the reservation will be submitted to the Senate only if the Executive Branch decides that it is of sufficient substantive import to warrant the Senate's attention. Generally, if a state objects to a reservation which meets the above requirements, the reserving state may still become a party to the agreement. It would, however, not enter into force between that state and the objecting state. If the objecting state is a "necessary party" to the agreement, the reserving state cannot become a party to the agreement. Necessary parties are those parties without which the treaty cannot according to its terms go into effect. Article V (3) of the agreed language requires the "ratification by all nuclear weapon states signatory to this Treaty."

UNDERSTANDINGS and OTHER STATEMENTS

Some states may sign, ratify, or accede to the treaty subject to "understandings", "statements" or "declarations" which may not be true reservations. The substance of the statement is the key. The United States has defined these terms as follows:

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 - 3 -

" 'Understanding' is used to designate a statement when it is not intended to modify or limit any of the provisions of the treaty in its international operation, but is intended merely to clarify or explain or to deal with some matter incidental to the operation of the treaty in a manner other than a substantive reservation. Sometimes an understanding is no more than a statement of policies or principles or perhaps an indication of internal procedures for carrying out provisions of the treaty. The terms 'declaration' and 'statement' when used as the descriptive terms are used most often when it is considered essential or desirable to give notice of certain matters of policy or principle, but without any intention of derogating in any way from the substantive rights or obligations as stipulated in the treaty." (U.S. Statement in A/3687 Depository Practice in Relation to Reservations, Rep't of the Sec'y Gen. 39-40 (1964).)

Such statements, if they are not true reservations, are not susceptible to objections.

#### DEPOSITARY'S DUTY FOR RESERVATIONS and other STATEMENTS

Under paragraph 4 of Article V of the agreed language to the Treaty provision is made for ratification and accession subsequent to entry into force. If a state making an accession, does so with a reservation, paragraph 5 of the agreed language requires the Depositary States to inform the other states of "any requests for convening a conference or other notices."

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- 4 -

It is the practice of the U.S. to inform all interested states of the terms of a reservation after its deposit with the signature, ratification, or accession. Notification is usually accompanied by a request for a statement as to the State's attitude with respect to the reservation. The U.S. follows general international practice, and paragraph 5 of the treaty is merely an articulation of that practice. Once notification of a reservation is given, a reasonable amount of time must be allowed for states already parties to indicate their objection. Generally, 12 months after notification is considered a reasonable time.

RESERVATIONS or other STATEMENTS WHICH MAY BE INTRODUCED

1. Reservations or understandings concerning the acceptance of IAEA safeguards assuming a treaty obligation of non-nuclear weapon states to undertake to accept IAEA safeguards.

(a) The five Euratom members which are non-nuclear weapon states might ratify the treaty subject to the understanding that the phrase "undertakes to accept IAEA safeguards" in Article III permits a reasonable time period such as three years to accept IAEA safeguards.

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- 5 -

Such a statement should be treated by the U.S. as a unilateral statement of understanding which is not susceptible to objections as is a reservation. This would also mean, however, that if one of these states should deposit its instrument of ratification with the U.S., the U.S. as depositary is under the obligation to transmit the statement of understanding to the other signatories or parties to the agreement for their comment.

(b) The GDR may deposit its instrument of ratification subject to the condition that since ~~it~~ has undertaken to accept IAEA safeguards as a part of its obligations under the treaty it will become a party to the treaty only if it is able to become a member of the IAEA.

The U.S., as it has done in the LTBT and will do with the Space treaty, will issue the usual disclaimers regarding the ratification of the GDR. Therefore, since it does not recognize the GDR ratification the question would not arise as to its obligation to object to a condition to the GDR's ratification.

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- 6 -

As in the case of the LTBT, however, we should maintain that "the East German regime would have committed itself to abide by the provision of the Treaty." (Hearings, on the Nuclear Test Ban Treaty, p. 18 (1963).)

2. Accession contingent upon conclusion of another agreement. It seems clear, that a reservation which would indicate accession only upon conclusion of another agreement, (i.e., a cutoff) would not be consistent with the specific terms of the treaty. This is because the requirement that another treaty be concluded contemporaneously with the Non-Proliferation Treaty was not the intention of the negotiators. If a condition were to include the "coupled with or followed by" language of the Joint Memorandum of the Eight non-aligned nations at the ENDC of August 19, 1966 (ENDC/178), it might be considered more consistent with the objectives of the treaty.

There is also ample negotiating history to justify this type of statement by one of the non-aligned nations. Such a reservation may have certain advantages for the U.S. If India, for example, were to agree to ratify or accede only subject to such statement, the desirability of having her a Party could provide needed impetus for conclusion of other measures. It could be pointed out that the U.S. has tabled proposals in the past (cut off, freeze) which demonstrate its awareness of responsibility as a nuclear-weapon state. Any anticipated plans for tabling proposals at the current session could also be noted.

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- 7 -

3. Ratification or accession limited to a specific period of years. Article VI of the agreed language states that:

"This Treaty shall be of unlimited duration. Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all Parties to Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests."

This clause is, except for changes in the notification requirements, the same as Article IV of the 1963 Test Ban Treaty. Notice must be given to the Security Council and the other states following the decision to withdraw.

Signature by a state of a specific time duration at the outset of the treaty would be contrary to this provision. It would, in effect, anticipate the occurrence of an "extraordinary event." following<sup>a</sup> "breach" or "violation of the agreement, a state would, in any event have the right to withdraw. International law permits one party to consider a treaty "voidable" if there is a violation by another.

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-8-

In the case of the Limited Test Ban, the U.S. maintained that a "violation" or "breach" of the treaty would give rise to an immediate right of termination. (hearings cited above at 37.)

A reservation limiting the ratification or accession to a specific number of years would be considered as contrary to the purposes of the treaty. The deposit of such an instrument of ratification or accession by the U.S. should not be accepted.

4. Combination of 2 and 3. A reservation might state that unless another arms control treaty is agreed to within a specific time period, the reserving state will consider the "supreme interests of its country" have been jeopardized and withdraw. Such a reservation is not on its face contrary to the purposes and provisions of the treaty, but should, however, be strongly discouraged. The alternate statement in 2 - that this treaty should be "coupled with or followed by" another agreement-could be urged as a substitute.

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